IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 2787 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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KIRANBHAI RAMANLAL DAVE - Petitioner(s)

Versus

STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :

M/S THAKKAR ASSOC. for Petitioner(s) : 1,
MR HM PRACHCHHAK ASST GOVERNMENT PLEADER for Respondent(s) : 1,
None for Respondent(s) : 2 - 3.

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 24/02/2006

ORAL JUDGMENT

1. By way of this petition under Article 226 of the Constitution of India, the petitioner has prayed for an appropriate writ, order and/or

direction quashing and setting aside the order passed by the Deputy Collector, Stamp Duty Valuation, Division-1, Vadodara dated 16.10.2003 passed under Section-32(A) of the Bombay Stamp Act directing the petitioner to pay deficit stamp duty of Rs.1,35,472/- plus Rs.250/- by way of penalty with respect to the document registration No.5399 dated 14.1.1995 presented before the Sub-Registrar, Vadodara as well as the attachment notice dated 6.1.2006 issued by the Special Recovery Officer, Stamp Duty Valuation, Division-I, Vadodara for recovery of the aforesaid amount.

2. It is not in dispute that against the impugned order dated 16.10.2003, as such, the statutory remedy of an appeal is provided under Section-32-B of the Bombay Stamp Act and it is the contention on behalf of the petitioner that the petitioner was not served with the copy of the impugned order dated 16.10.2003 passed by the Deputy Collector, Stamp Duty Valuation, Division-

I, Vadodara and the petitioner was not aware of the said order till the petitioner received attachment order dated 6.1.2006. If that is so, the petitioner can point out to the appellate authority that from the date of receipt of the order and/or date of knowledge, such an appeal which will be filed, is filed within the period of limitation. Under the circumstances, the petitioner is relegated to prefer an appeal before the Chief Revenue Controlling Authority under Section-32-B of the Bombay Stamp Act against the impugned order dated 16.10.2003 along with an application for delay condonation pointing out that in fact, he has not received the impugned order dated 16.10.2003 till 6.1.2006 and therefore, the appeal is preferred within limitation period from the date of knowledge and /or i.e. from the date of receipt of the order. The question that whether the order dated 16.10.2003 was served upon the petitioner at any point of time earlier prior to 6.1.2006 or not,

can be confirmed and verified by the Chief Revenue Controlling Authority i.e. appellate authority after calling for necessary record and proceedings from the office of the Deputy Collector, Stamp Duty Valuation, Division-I, Vadodara who has passed the impugned order and after considering the record, it can be verified whether the impugned order was served upon the petitioner earlier or not. Under the circumstances, the Chief Revenue Controlling Authority / appellate authority is directed to consider the delay condonation application to consider the same after calling for record from the office of the Deputy Collector, Stamp Duty Valuation who has passed the impugned order dated 16.10.2003 and if ultimately, it is found that the impugned order dated 16.10.2003 was not served upon the petitioner, then the appellate authority may consider the same in accordance with law and on merits subject to complying with other requirements as required under Section-32-B

of the Bombay Stamp Act i.e. pre-deposit etc. In the event an appeal is preferred within a period of two weeks from today along with delay condonation application as stated above, the Chief Revenue Controlling Authority is directed to act accordingly as stated above. However, if ultimately it is found that the impugned order dated 16.10.2003 was served upon the petitioner, in that case, the Chief Revenue Controlling Authority need not decide and dispose of the appeal and the delay condonation application .

3. It is, however, made clear that this Court has not expressed any opinion on merits and even with regard to either condonation of delay but this Court has simply directed the appellate authority / Chief Revenue Controlling Authority to verify the factum whether the order passed by the Deputy Collector, Stamp Duty Valuation, Vadodara dated 16.10.2003 was served upon the petitioner or not and if not, to consider the

appeal and delay condonation application that may be preferred by the petitioner in accordance with law and on merits in light of the observations hereinabove.

4. With aforesaid observations and direction, the present special civil application stands disposed of accordingly.

Direct Service is permitted.

[M.R.Shah, J.]

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